IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO.407 OF 2006

Sujata Rane .. Applicant
Versus
State of Maharashtra & Anr. .. Respondent

Mr.Kuldeep Patil for applicant
Mr.M.S.Mhambre, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 6th December 2006.
P.C.

. This matter is kept under the caption "Order" (office objections not removed). Office was directed to verify whether the State has preferred any revision against the order passed by the learned Sessions Judge, Sindhudurg on 30th August 2006.

2. Office remark shows that the State has not initiated any proceedings to challenge this order of the learned Sessions Judge.

3. In these circumstances, I have heard Mr.Patil for applicant on the point of admission of this Revision Application.

4. Mr.Patil submits that this is a fit case for interference in Revisional Jurisdiction of this Court because the trial court had convicted first respondent - original accused of the offences punishable under section 354 and 457 of I.P.C. He invites my attention to the reasons assigned by the learned Trial Judge to support his ultimate order of conviction and sentence. Mr.Patil submits that the accused is ordered to suffer R.I. for six months and fine of Rs.1000/- and in default to suffer R.I. for 15 days under each of the offences.

5. Criminal Appeal No.12 of 2004 has been preferred by the original accused to challenge the judgement of J.M.F.C., Malvan. He submits

that lower appellate court has reversed the judgement of conviction and sentencing the accused as above only on the basis that the learned Judge was influenced to a great extent by the demeanour of the prosecution witnesses during the course of their deposition and was sympathetic towards P.W.1. He submits that the charge of outraging modesty of P.W.1 was based upon the accused entering house of P.W.1 at 4.00 a.m. Mr.Patil submits that once learned Additional Sessions Judge has not found any substance in the contentions with regard to charge under section 457 of I.P.C., then, there was no warrant for interfering with the judgement of conviction and sentence. Mr.Patil's case is that the presumption of the learned J.M.F.C. that normally and ordinarily Indian woman would not level a false charge of outraging her modesty and rape is not only well established but ought to have been followed in this case.

6. With the able assistance of Mr.Patil I have perused the judgement rendered by the courts below. P.W. 1 in her testimony and deposition has categorically stated that her husband left the house for a temple at about 4.00 a.m. i.e. early morning hours. Her case was that her husband locked the door from outside. The accused opened the door entered the house and outraged her modesty. However, the learned Sessions Judge has rightly referred to the material omission and discrepancy in the deposition of P.W.1. Before the Court she has stated that the door was locked by her from inside. This is not a minor discrepancy as suggested by Mr.Patil. Further, the lower appellate court has assigned cogent and satisfactory reasons for disbelieving the version of P.W.1. Court below, in my opinion, rightly proceeded to hold that the son of P.W.1 was present in the house but he has not fully supported the mother. The reasons assigned by

the lower appellate court in paras 15 and 17 of the order under challenge sums up the material discrepancies and omissions in the version of prosecution witness. Once such is the version, then, the lower appellate court was right in exercising its appellate jurisdiction and interfering with the conviction and sentence awarded by J.M.F.C. Further, the aspect of alleged settlement between the parties has also not been referred to by J.M.F.C., according to learned Sessions Judge. Learned Sessions Judge has rightly observed that emotions, demeanour of witnesses so also unnecessary sympathy should not influence the outcome of all criminal cases. Ultimately, these are matters which are of substance depending upon facts and circumstances in each case. As a general proposition, it is not possible to agree with J.M.F.C.

7. In A.I.R. 2005 S.C. 643 (Pandurang Sitaram Bhagwat Vs. State of Maharashtra) the

Supreme Court has observed that Law Reports are replete with cases where Indian women have made false charges of rape and outraging their modesty. The presumption is not of universal application for all times and in all cases. Hence, I do not find that the learned Judge was in any error in reversing judgement of the J.M.F.C. acquitting first respondent accused.

8. Limits of Revisional Jurisdiction are well settled. I do not think that this is a fit case for interference. This Court is not a Court of further Appeal and I am unable to accept the plea of Mr.Patil that merely because the charge under section 457 was also levelled, the incident admittedly took place. These are matters of preponderance of probabilities which have no place in a criminal case and in criminal trial. Revision is summarily dismissed.

(S.C.Dharmadhikari, J)